

# EXHIBIT B

# EXHIBIT B

STATE OF NEW MEXICO  
**OFFICE OF SUPERINTENDENT OF INSURANCE**

Mailing Address: P.O. Box 1689, Santa Fe, NM 87504-1689

Physical Address: 1120 Paseo de Peralta, Room 428, Santa Fe, NM 87501

Main Phone: (505) 827-4601; Main Fax (505) 827-4734; Toll Free: 1-855-4-ASK-OSI

[www.osi.state.nm.us](http://www.osi.state.nm.us)

**SUPERINTENDENT OF  
INSURANCE**

John G. Franchini – (505) 827-4299

**ACTING DEPUTY  
SUPERINTENDENT**

Alan Seeley – (505) 827-4307



**Service of Process**

Room 434  
(505) 827-1291

February 23, 2015

Standard Insurance Company  
Legal Dept. Holley Y. Franklin  
1100 SW Sixth Ave. P12B  
Portland, OR 97204

Re: Tera M. Fenixx Vs Standard Insurance Company  
D202CV2015-01123

Dear Mr. President:

In accordance with the provisions of NMSA 1978, Sections 59A-5-31 & 59A-32, enclosed is a copy of a Civil Summons, Complaint for Damages for Breach of Contract and Unfair Claims Practices, Demand for Jury Trial and a Court-Annexed Arbitration Certification, in the State of New Mexico on the above styled cause. Service has been accepted on your behalf as of February 23, 2015.

Respectfully,

John G. Franchini, Superintendent

Enclosure

CERTIFIED MAIL 7012 3460 0000 1405 1329

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

No. D-202-CV-2015-01123

TERA M. FENIX,  
Plaintiff

Judge: C. Shannon Bacon

v.

Defendant  
Standard Insurance Company  
c/o John G. Franchini, Superintendent  
of Insurance  
Office of Superintendent of Insurance  
P.O. Box 1689  
Santa Fe NM 87504-1689

STANDARD INSURANCE COMPANY,  
Defendant.

**CIVIL SUMMONS**

**TO THE ABOVE NAMED DEFENDANT(S):** Take notice that:

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA). The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at [www.nmbar.org](http://www.nmbar.org); 1-800-876-6657; or 1-505-797-6066.

Dated at \_\_\_\_\_, New Mexico, this \_\_\_\_ day of 2/16/2015, 2015.

Attorney for Plaintiff

Name: Richard Fischer  
Address: 620 N. Grant Avenue, Suite 401  
Telephone No.: (432) 333-3900  
Fax No.: (432) 271-4891  
Email Address: rfischer@westtexasdisabilitylawyer.com



GREGORY T. IRELAND  
CLERK OF THE DISTRICT COURT

By:   
Deputy

CLERK OF COURT

By:

**RETURN <sup>1</sup>**

STATE OF NEW MEXICO )

)ss

COUNTY OF \_\_\_\_\_ )

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

**(check one box and fill in appropriate blanks)**

☐ to the defendant \_\_\_\_\_ *(used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)*

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA *(used when service is by mail or commercial courier service)*.

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, *(used when the defendant is not presently at place of abode)* and by mailing by first class mail to the defendant at \_\_\_\_\_ *(insert defendant's last known mailing address)* a copy of the summons and complaint.

☐ to \_\_\_\_\_, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at \_\_\_\_\_ *(insert defendant's business address)* and by mailing the summons and complaint by first class mail to the defendant at \_\_\_\_\_ *(insert defendant's last known mailing address)*.

☐ to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.

[ ] to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem]  
of defendant \_\_\_\_\_ (*used when defendant is a minor or an incompetent  
person*).

[ ] to \_\_\_\_\_ (*name of person*), \_\_\_\_\_,  
(*title of person authorized to receive service. Use this alternative when the defendant is a  
corporation or an association subject to a suit under a common name, a land grant board of  
trustees, the State of New Mexico or any political subdivision*).

Fees: \_\_\_\_\_

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title (*if any*)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.<sup>2</sup>

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title

#### USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 13-8300-022, effective for all cases pending or filed on or after December 31, 2013.]

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

TERA M. FENIXX,  
Plaintiff

v.

No. D-202-CV-2015-01123

STANDARD INSURANCE COMPANY,  
Defendant

**COMPLAINT FOR DAMAGES**  
**FOR BREACH OF CONTRACT AND UNFAIR CLAIMS PRACTICES**

COMES NOW Plaintiff, Tera M. Fenixx, and for cause of action against Defendant, states:

1. Plaintiff is, and at all times material hereto has been, a resident of Albuquerque, Bernalillo County, New Mexico.
2. Defendant is an Oregon corporation and may be served with process by service on its appointed attorney to receive service of process, John G. Franchini, Superintendent of Insurance, P.O. Box 1689, Santa Fe, NM 87504-1689.
3. This Court has jurisdiction pursuant to Defendant's transaction of business within the State of New Mexico.
4. Venue is proper in this county as Plaintiff resides in Bernalillo County, New Mexico and the contract that is the basis of this suit was made in Bernalillo County, New Mexico.
5. Defendant provided Plaintiff with a certificate of group long-term disability ("LTD") insurance ("certificate"), effective January 1, 2012, pursuant to Plaintiff's employment as an elementary school teacher with Albuquerque Public Schools, the policyholder of the group policy (Group Policy Number 645746-D). According to the terms of the certificate issued to Plaintiff, Plaintiff would become insured by being a "member," defined as being

a regular employee of the Employer, being actively at work at least 30 hours each week and being a citizen or resident of the United States of America. The certificate also states that members' insurance became effective by applying in writing for insurance and agreeing to pay premiums.

6. The certificate further states that Defendant "will pay LTD Benefits according to the terms of the Group Policy after [it] receive[d] Proof of Loss satisfactory to us."
7. Plaintiff applied for insurance and paid premiums for group long-term disability insurance under the Albuquerque Public Schools policy issued by Defendant, thereby entering into a contract with Defendant.
8. Subsequently, Plaintiff filed a claim for LTD benefits under the policy, filing a proof of loss and other documentation as required by the terms of the policy. Plaintiff provided Defendant with releases to obtain medical records and other necessary documentation, and assisted Defendant in obtaining this documentation.
9. Plaintiff reported numerous medical conditions in her proof of loss, including chronic neck and low back pain following multiple surgeries to her lumbar and cervical spine, cervical stenosis, spondylosis, degenerative joint disease, and pain in her joints, pelvis, and arms.
10. All conditions precedent have been performed or have occurred.
11. Defendant denied Plaintiff's claim for LTD benefits under the policy despite Defendant having in its possession sufficient proof, medical and otherwise, that Plaintiff was unable to perform not only her own occupation as an elementary school teacher, but also any occupation.
12. Defendant breached the terms of its contract with Plaintiff when it refused to provide LTD benefits to Plaintiff despite her satisfying Defendant's definitions of both "own

occupation” and “any occupation” disability, thereby harming Plaintiff. As a result of Defendant’s breach, Plaintiff has sustained direct and consequential, or indirect, damages as will be proved at trial.

13. Furthermore, Defendant engaged in unfair and deceptive practices, in contravention of NMSA § 59A-16-20, when it willfully failed to acknowledge and act reasonably promptly upon communications from Plaintiff with regard to her claim. Defendant also engaged in unfair and deceptive practices in its willful failure to make a good faith attempt to effectuate prompt, fair and equitable settlement of Plaintiff’s claim for LTD benefits, in which liability had become reasonably clear.

14. As a result of Defendant’s unfair and deceptive practices, Plaintiff has sustained direct and consequential, or indirect, damages as will be proved at trial.

Wherefore, Plaintiff prays this Court enter its judgment against Defendant awarding her compensatory damages, punitive damages, prejudgment interest, and attorney’s fees, and for such other and further relief as may be deemed equitable and just.

Respectfully submitted,

THE FISCHER LAW FIRM

By: /s/ Richard Fischer  
Richard Fischer  
New Mexico State Bar No. 28224  
620 N. Grant Avenue, Suite 401  
Odessa, TX 79761  
Phone: (432) 333-3900  
Fax: (432) 271-4891  
[rfischer@westtexasdisabilitylawyer.com](mailto:rfischer@westtexasdisabilitylawyer.com)  
Attorney for Plaintiff



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DISTRICT COURT CLERK  
2/12/2015 8:36:51 AM  
GREGORY T. IRELAND  
Catherine Chavez

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

TERA M. FENIXX,  
Plaintiff

v.

No. D-202-CV-2015-01123

STANDARD INSURANCE COMPANY,  
Defendant

**DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff by her attorney, Richard Fischer, and demands trial of all issues in this cause by a jury of six (6) and submits herewith a jury deposit of \$150.00.

Respectfully submitted,

THE FISCHER LAW FIRM

By: /s/ Richard Fischer  
Richard Fischer  
New Mexico State Bar No. 28224  
620 N. Grant Avenue, Suite 401  
Odessa, TX 79761  
Phone: (432) 333-3900  
Fax: (432) 271-4891  
[rfischer@westtexasdisabilitylawyer.com](mailto:rfischer@westtexasdisabilitylawyer.com)  
Attorney for Plaintiff

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Catherine Chavez

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

TERA M. FENIXX,  
Plaintiff

v.

No. D-202-CV-2015-01123

STANDARD INSURANCE COMPANY,  
Defendant

COURT-ANNEXED ARBITRATION CERTIFICATION

Plaintiff, Tera M. Fenixx, by and through her attorney, Richard Fischer, The Fischer Law Firm, pursuant to Second Judicial District Local Rule 2-603, certifies as follows:

This party seeks relief **other than a money judgment and/or seeks relief in excess** of twenty-five thousand dollars (\$25,000.00) exclusive of punitive damages, interest, costs, and attorney fees.

Respectfully submitted,

THE FISCHER LAW FIRM

By: /s/ Richard Fischer  
Richard Fischer  
New Mexico State Bar No. 28224  
620 N. Grant Avenue, Suite 401  
Odessa, TX 79761  
Phone: (432) 333-3900  
Fax: (432) 271-4891  
[rfischer@westtexasdisabilitylawyer.com](mailto:rfischer@westtexasdisabilitylawyer.com)  
Attorney for Plaintiff

I hereby certify that an endorsed copy of the foregoing pleading was mailed or delivered to all parties entitled to notice on this 12<sup>th</sup> day of February, 2015.

/s/ Richard Fischer  
Richard Fischer